

Revisions, effective March 1, 2001, to Information Pertaining to Judge Norma L. Shapiro provided in the "Handbook of Pretrial & Practice Procedures of Individual Judges & Magistrates of the United States District Court for the Eastern District of Pennsylvania."

JUDGE NORMA L. SHAPIRO

Judge Shapiro was born on July 27, 1928, in Philadelphia, Pennsylvania. She received a B.A. from the University of Michigan in 1948, and a J.D. from the University of Pennsylvania in 1951. Prior to her appointment to the bench, Judge Shapiro was in private practice in Philadelphia. Judge Shapiro was appointed to the United States District Court for the Eastern District of Pennsylvania in 1978.

A. PRELIMINARY GENERAL MATTERS

1. Electronic Filing

Judge Shapiro fully supports and encourages the use of the Electronic Filing System for the submission of complaints, notices of appeal, notices of removal and other civil documents. The Electronic Filing System provides greater efficiency and timeliness in the filing of pleadings, as well as electronic storage of documents for remote access by the court, the bar and the litigants. Applications are available from the Office of the Clerk of Court, 601 Market Street, Room 2609, Philadelphia, Pennsylvania 19106-1797 or (215) 597-7704.

Counsel are advised that current telephone and FAX number(s) and any changes thereto are to be submitted in writing to the Clerk of Court with a copy to the courtroom deputy clerk.

2. Correspondence with the Court

Counsel may write to Judge Shapiro (with copies to all other counsel) to request an extension of time or for other matters pertaining to scheduling; counsel shall state whether the request is opposed. Counsel opposing such request shall notify the

court promptly in writing. Judge Shapiro does not permit correspondence in lieu of formal discovery, contested motions or substantive matters that should be made of record; as to such matters, opposing counsel will be expected to respond within the time required by the Federal Rules of Civil Procedure unless otherwise notified by the court for compelling reasons.

3. Communication with Law Clerks

Contact with the Deputy Clerk is generally preferable, particularly to obtain copies of orders or discuss scheduling conflicts. However, Judge Shapiro permits communication with her law clerks regarding **administrative** matters such as scheduling, extensions of time, notice of settlement, etc., **if the Deputy Clerk is unavailable**. Joint calls by counsel for all parties are preferred. If counsel for all parties are not present on the phone call, the caller must state whether opposing counsel has been contacted regarding the subject of the call.

4. Telephone Conferences

Telephone conferences for preliminary pretrial conferences, scheduling changes, extensions of time, and similar matters are acceptable to Judge Shapiro by arrangement with the Deputy Clerk. Telephone availability for final pretrial conferences is not acceptable unless leave of court has been granted. Leave is granted **only** when attendance would be unduly expensive or burdensome. Parties must remain on telephone availability until released by the court. If more than five parties are involved in a telephone conference call, counsel or a conference call operator must place the call.

5. Oral Arguments and Evidentiary Hearings

Judge Shapiro sets aside **9:30 a.m.** as a preferred time for holding preliminary Rule 16 scheduling conferences, oral arguments on dispositive motions other than summary judgment, and **4:00 p.m.** for arguments on motions for summary judgment and final pretrial or settlement conferences. Judge Shapiro is willing to vary such scheduling at the request of counsel, especially if persons from out-of-town must participate.

6. Civility Among Attorneys

Judge Shapiro expects counsel to abide by the Code of Civility adopted by the Pennsylvania Supreme Court on December 6, 2000, and the Working Rules of Professionalism adopted by the Philadelphia Bar Association on June 28, 1990, copies of which are appended hereto.

B. **CIVIL CASES**

1. Pretrial Procedure

a. Pretrial Conferences

Fed.R.Civ.P. 16 conferences will be scheduled within 60 days after a responsive pleading has been filed. Counsel will be expected to have complied with the requirements of Fed.R.Civ.P. 26(f), as amended December 1, 2000, prior to this conference.

Judge Shapiro conducts status conferences on order or request, settlement conferences (except in non-jury cases), and pretrial conferences. A final pretrial conference normally will be held as close to the time of trial as reasonable in the

circumstances, and, unless specially listed, the case will be deemed ready for trial at anytime thereafter. **Trial counsel are required to be present at the final pretrial conference.** Copies of the Pretrial Conference Order and Order pursuant to Federal Rule of Civil Procedure 16 normally issued by Judge Shapiro in connection with the Rule 16 Pretrial Conferences, are attached. As explained in the attached Pretrial Conference Order, counsel are required to complete and return a Pretrial Scheduling/Status Conference Report to Judge Shapiro one week prior to a Rule 16 conference. The agenda normally used at Rule 16 conferences, as well as requirements pertaining to final pretrial conferences and information regarding possible sanctions for failure to comply with scheduling or pretrial orders, are set forth in the attached Order Pursuant to Federal Rule of Civil Procedure 16, and Local Rules 16.1 and 16.2. Also attached are Judge Shapiro's Standing Pretrial Order No. 1 in Special Track cases and a case statement required if a claim is asserted under RICO.

b. Continuances and Extensions

(I) General Policy

Judge Shapiro will normally consult counsel concerning a briefing schedule, oral argument, evidentiary hearing, discovery deadline, final pretrial conference or trial date and then grant one reasonable continuance only for good cause; minor changes to accommodate counsel will be granted when possible. However, continuances in arbitration cases are granted only in accord with Local Rule 53.2.

(ii) Requests for Extensions and Continuances

Requests for extensions or continuances should be submitted before the time previously ordered or imposed by Rule has expired and well before, when possible. Judge Shapiro prefers that continuances or extensions be requested by submitting a stipulation or motion with a proposed order.

c. General Motion Practice

(I) Oral Argument on Motions

Oral argument on motions to dismiss will be heard at the Fed.R.Civ.P. 16 conference; oral argument on motions for summary judgment will be heard at the final pretrial conference. Oral argument otherwise will not be held routinely but will be considered on request; oral argument will more likely be granted on dispositive motions.

(ii) Reply and Surreply Briefs

Reply and surreply briefs are not encouraged; where necessary, they may be allowed by the court's scheduling order or by leave of court on request, particularly on dispositive motions. If oral argument is granted, leave to reply will usually be denied.

(iii) Chambers Copies of Motion Papers

Judge Shapiro appreciates receiving a courtesy copy of all motion papers.

d. Discovery Matters

(I) Length of Discovery Period and Extensions

Judge Shapiro normally permits from sixty (60) to ninety (90) days for the completion of discovery; more time is allowed in complex cases or on a specific showing of need at the Rule 16 conference. Extensions of time are granted for a time certain on a specific showing of a need for that time for a specific purpose.

(ii) Discovery Conferences and Dispute Resolution

After the Rule 16 conference, Judge Shapiro holds discovery conferences only if requested by counsel or required by the conduct of counsel. Judge Shapiro does not encourage telephone conferences to resolve discovery disputes arising during depositions, but permits them when necessary.

e. Confidentiality Agreements

If it is necessary and appropriate that a confidentiality agreement be filed with the court, Judge Shapiro prefers that it be submitted for consideration by stipulation; if agreement cannot be reached, a party seeking such an order may move for a proposed form of order prior to the preliminary pretrial conference. Judge Shapiro will sign a confidentiality order, even if agreed to by the parties, only if it is not impermissibly restrictive or difficult to enforce and there is an adequate showing of good cause. Furthermore, no confidentiality agreement will be approved unless it is limited to pretrial discovery between and among counsel, does not restrict the dissemination of information obtained legally from sources other than the opposing party, does not contemplate return or destruction of documents filed with the court, and is subject to modification or dissolution by the court upon notice to all counsel.

f. Witnesses

Counsel are expected to comply with Fed.R.Civ.P. 26(a)(2), as amended December 1, 2000. Counsel are also expected to offer only expert testimony complying with Fed.R.Evid. 702, as amended December 1, 2000.

2. Settlement

a. General Approach to Settlement and Non-Jury Cases

Judge Shapiro encourages settlement discussions and inquires as to the status of such settlement discussions at each pretrial conference. Judge Shapiro becomes involved in the discussions only with the consent of all parties. She will refer settlement negotiations to a magistrate judge if the parties express such a preference or it is in the interest of the administration of justice. As a general rule, she does not participate in settlement discussions in non-jury cases, but she may suggest that the parties explore settlement possibilities. She may refer a case to a magistrate judge, propose a mediator or suggest some form of alternative dispute resolution such as arbitration or a summary jury trial.

b. Referral of Settlement Negotiations to Another District Court Judge

Judge Shapiro sometimes refers a matter for settlement to another district court judge if requested by the parties or if Judge Shapiro believes there is a potential that it may be productive, but only if, for some special reason, such a referral is preferable to referral to a magistrate judge.

3. Arbitration

a. General Approach to Arbitration Cases

Judge Shapiro has no special practice or procedure for arbitration cases, except that pretrial memoranda are not required nor are pretrial conferences routinely held. Motions filed less than thirty (30) days prior to the scheduled arbitration date will not be considered. Continuance of an arbitration date beyond the thirty (30) days permitted by Local Rule 53.2(5)(A) is rarely granted; there must be a motion and showing of good cause other than a need for extended discovery.

b. Scheduling of Trial *De Novo* from Arbitration

Judge Shapiro schedules a final pretrial conference promptly after a demand for a trial *de novo*, and places the case in the trial pool as soon as possible.

4. Proposed Final Pretrial Memoranda

a. Required Form of Final Pretrial Memoranda

The order following the preliminary pretrial conference will specify whether the form provided in Local Rule 16.1(c) or 16.1(d) should be followed. In addition, Judge Shapiro requires that all exhibits listed in proposed final pretrial memoranda have been previously provided to opposing counsel if not received from opposing counsel in discovery. Exhibits should be numbered for use at trial. It is helpful to list any stipulated facts to avoid the necessity of proof at trial. Admissibility of exhibits will be considered at the final pretrial conference. Therefore, strict compliance with Fed.R.Civ.P. 26, as amended December 1, 2000, is required.

Counsel are required to identify witnesses and documents, as required by Fed.R.Civ.P. 26(a)(2) and (3) in their final pretrial memoranda to aid in the conduct of the

final pretrial conference. Testimony and exhibits will be limited at trial to the information timely disclosed in accordance with Fed.R.Civ.P. 26(a)(2) and (3), as amended December 1, 2000.

b. Common Deficiencies in Pretrial Memoranda

Counsel frequently do not comply with Fed.R.Civ.P. 26 and the pretrial orders of the court. A party may not reserve the general right to offer witnesses or exhibits listed by their opponent, but must list the witnesses and exhibits it may present at trial in its case in chief; witnesses on rebuttal or exhibits to be used solely for impeachment purposes need not be listed. The lists of witnesses, documents and exhibits in the final pretrial memorandum may be supplemented only for good cause as determined by Judge Shapiro. A lengthy statement of contested facts in the final pretrial memorandum is not necessary.

5. Injunctions

a. Scheduling and Expedited Discovery

Applications for temporary restraining orders will be heard *ex parte* only when required by the nature of the action. Preliminary injunction hearings are promptly scheduled upon request; permanent injunction hearings, as other final dispositive proceedings, are held when scheduled by the court after consultation with counsel.

b. Proposed Findings of Fact and Conclusions of Law

Judge Shapiro does not ordinarily require proposed findings of fact and conclusions of law for preliminary injunction hearings; if submitted, they should be submitted as promptly as possible.

6. Trial Procedure

a. Scheduling of Cases

In scheduling cases for trial, Judge Shapiro assigns a date certain to the extent possible, but she also places cases in the trial pool. In an unusual situation, there will be a special listing after consultation with counsel; a special listing is a firm date for trial.

b. Conflicts of Counsel

Judge Shapiro prefers that counsel notify her of professional or personal conflicts affecting her trial schedule by letter to her Deputy Clerk.

c. Cases Involving Out-of-Town Parties or Witnesses

Judge Shapiro makes an effort to assign a date certain for trial of cases involving numerous parties, out-of-town parties or witnesses; otherwise, there will ordinarily be at least one (1) week's notice of the trial date.

d. Note-taking by Jurors

Judge Shapiro permits note-taking by jurors.

e. Trial Briefs

Judge Shapiro encourages submission of trial briefs when necessary or likely to be helpful to the court, but she does not expect them to be filed in all cases.

f. Voir Dire

It is Judge Shapiro's usual practice to conduct the general *voir dire* herself. She permits counsel to submit proposed *voir dire* questions for the entire panel and to conduct supplemental individual *voir dire* following her questions of the panel as a group. Where a special *voir dire* panel is used, a written questionnaire may be used in consultation with counsel.

g. Side Bar Conferences

Judge Shapiro holds side-bar conferences when necessary to prevent improper argument before the jury; side-bar conferences are on the record.

h. In Limine Motions

Except in complex cases, few motions *in limine* are appropriate. Judge Shapiro will hear such motions at the final pretrial conference or immediately prior to trial unless an earlier ruling will assist settlement discussions.

I. Examination of Witnesses Out of Sequence

Judge Shapiro is willing to take witnesses out of turn for their convenience, particularly where there is no objection by opposing counsel.

j. Opening Statements and Summations

Judge Shapiro prefers that opening statements be limited to thirty (30) minutes, but she will allow more time if really necessary. She strongly discourages the use of opening statements to provide an advance summary of all the evidence to be presented or to make closing argument from anticipated evidence. No exhibits or demonstrative evidence may be used in opening unless there has been an approved stipulation of admissibility on the record.

Judge Shapiro does not have an established time limit for summations, but expects counsel to respect the natural limits of jurors' ability to give undivided attention to argument. Only one attorney for each party may open, and only one attorney for each party may close.

k. Examination of Witnesses or Argument by More than One Attorney

Judge Shapiro will permit more than one attorney for a party to examine different witnesses or to argue different points, but two attorneys may not examine the same witness. See Local Rule 43.1.

l. Examination of Witnesses Beyond Redirect and Re-cross

Judge Shapiro does not have a policy regarding examination of witnesses after redirect and re-cross have been completed; a policy is unnecessary because a request for such further examination is so rare.

m. Videotaped Testimony

Judge Shapiro requires that objections to videotaped testimony be ruled on in advance of trial.

n. Reading Material into the Record

When reading stipulations, pleadings, or discovery materials into the record, counsel must follow the Federal Rules of Civil Procedure. If depositions are read into the record at trial, Judge Shapiro requires that the pertinent deposition testimony be offered as an exhibit to avoid transcription in the trial record.

o. Preparation of Exhibits

Exhibits must be pre-marked and pre-exchanged; counsel should provide Judge Shapiro with a copy of trial exhibits.

p. Offering Exhibits into Evidence

Judge Shapiro has no preference regarding whether exhibits are offered into evidence when identified, at the close of testimony by the witness identifying the exhibit, at the close of the day, or at the close of each party's case-in-chief. She will not admit exhibits used in cross-examination if offered by the cross-examiner during an opponent's case.

q. Directed Verdict Motions

Judge Shapiro has no preference as to whether motions for a directed verdict (or Rule 41(b) motions in non-jury trials) are submitted in writing or orally. She does not regularly hear argument on such motions; she may occasionally hear argument on such motions in non-jury trials.

r. Proposed Jury Instructions and Interrogatories to the Jury

Judge Shapiro requires proposed jury instructions to be submitted in all cases prior to the start of trial. She holds a charging conference to discuss proposed jury instructions. She permits submission of supplemental proposed jury instructions prior to the charging conference.

If the case is to be submitted on special interrogatories, a proposed verdict form may be submitted. The final verdict form will be provided to counsel prior to closing argument. See 7e.

s. Proposed Findings of Fact and Conclusions of Law

Judge Shapiro requires submission of proposed findings of fact and conclusions of law in non-jury cases prior to the start of trial.

7. Jury Deliberations

a. Written Jury Instructions

Judge Shapiro will consider submitting written instructions to the jury.

b. Exhibits in the Jury Room

Judge Shapiro does not generally permit all trial exhibits to go to the jury room, but determines which exhibits go to the jury room after consultation with counsel for all parties.

c. Handling of Jury Requests to Read Back Testimony or Replay Tapes

Judge Shapiro will consult with counsel before allowing portions of testimony to be reheard by the jury.

d. Availability of Counsel During Jury Deliberations

Judge Shapiro does not require counsel to remain in the courthouse during deliberations; they must keep the deputy clerk advised of their whereabouts and remain reasonably available on telephone notice.

e. Taking the Verdict and Special Interrogatories

In a civil case, Judge Shapiro usually submits special interrogatories to the jury. Counsel may submit proposed special interrogatories in their final pretrial memoranda. Proposed special interrogatories are always submitted to counsel prior to closing arguments. See 6r.

f. Polling the Jury

Judge Shapiro's general practice is to poll the jury, without request from counsel.

g. Interviewing the Jury

Judge Shapiro does not ordinarily permit counsel to initiate juror interviews after the verdict has been recorded and the jury has been discharged, except upon motion and good cause shown. See Local Rule of Criminal Procedure 15(c).

C. OTHER GENERAL MATTERS

Judge Shapiro appreciates receiving copies of appellate briefs if a decision she renders is appealed.

Judge Shapiro expects that all papers will be filed prior to the day they are to be considered by the court.